Supreme Court, U.S.
FILED
03 . 29 APR 29 2003
OFFICE OF THE CLERK

NO. _____

In the
Supreme Court of the United States

FALL TERM 2002

Paul C. French, Jr.,

Petitioner,

V.

Bator & Berlin, P.C.
A Michigan Law Firm

Respondent

On Petition For A Writ of Certiorari
To The Michigan Supreme Court
For The State Of Michigan

PETITION FOR A WRIT OF CERTIORARI

In Pro Per
Paul C. French Jr.
28844 63rd Street
Bangor, Mi. 49013
(268) 427-5641

68 pp

QUESTIONS PRESENTED

1. When Petitioner French, a non-attorney, is held by the Trial Court to a higher standard of compliance with Michigan Court Rules than Michigan attorneys Gregory J. Bator and Marcia Scrimger were held; and when Petitioner's right to open discovery was abridged all while the Trial Court refused to enforce Michigan Court Rules all for the benefit of Bator and Berlin, a Michigan Law Firm and these acts resulted in improperly granting "Summary Disposition" to Respondent. Petitioner asserts that these actions or omissions violated Petitioner's Constitutional right to "equal protection of the laws" and the "Due Process" guaranteed in first clause of the Fourteenth Amendment of the United States Constitution.

2. When Bator and Berlin, P.C., a Michigan law firm headed by Attorney Gregory J. Bator, provided legal services for six-months without, and prior to, any written Agreement, did the performance of legal services under these circumstances automatically create an "Oral", "De-facto", or "Implied" contract and/or "agreement" or "understanding"? If such an agreement did not exist, then how did the Law Firm know: (a) what

they were retained to do; (b) what was the agreed upon hourly rate for legal services; (c) what form of bill was required and whom to bill; (d) whom they were legally representing when they talked to third parties; and finally, (e) that they could accept payments from Evergreen Manor, Inc. without violating the Rule of Professional Conduct of the Michigan Bar, if Evergreen Manor, Inc. was not the client as they subsequently alleged?

3. Did a subsequent written Letter of Agreement, executed some six months after Legal Services were first performed, when this written letter of Agreement failed to reference, or even identify, the former understanding or practices between the parties, change or negate in any way the prior legal "understanding" as to the name of the client or any other matters not specifically identified in the written "Letter of Agreement"?

4. Did the failure of the Trial Court to acknowledge this and other facts, result in denying Petitioner, through specific actions or omissions by a Governmental Agency, Due Process and/or Equal Protection of the Law as guaranteed by the Fourteenth Amendment to the U. S. Constitution and affirmed by the United States Supreme Court in VILLAGE OF

WILLOWBROOK v OLECH, 528 U. S. 562 (2000) noting that "irrational and wholly arbitrary" and motivated by ill will, which in this case was against a non-attorney in favor or an attorney.

PARTIES TO THE PROCEEDING

Including the parties named in the caption of this Petition, the parties are:

Petitioner: Paul C. French, Jr. (French) an individual and non-attorney individual;

Bator & Berlin, P. C. a Michigan Law Firm, Plaintiff [now Respondent] in the proceedings in the 36th Judicial Court [Van Buren County Circuit Court];

The Court of Appeals and the Supreme Court for the State of Michigan.

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PETITION FOR A WRIT OF CERTIORAR

Paul C. French, Jr., as a non-attorney, under appropriate rules of this court, requests that this Court issue a writ of certiorari to the Supreme Court for the State of Michigan.

OPINIONS BELOW

This is a dispute in which Petitioner was held personally liable for legal fees for legal services contracted for by Evergreen Manor, Inc. a corporation who was not a party, but should have been the party in this matter. Petitioners amended answer, timely filed, asserting that the wrong party had been named, was denied by the Trial Court and treated as a frivolous motion for which Petitioner was sanctioned.

The legal services in this matter were provided by Respondent, Bator and Berlin, P. C. for six months based upon an oral order of Evergreen Manor, Inc. and without any written document, but supported by the behavior and actions of the Respondent in looking at the format of their monthly invoices which were titled, "Invoice Submitted to Evergreen Manor, Attn. Paul and Betty Lou French".

Respondent acknowledged receipt of $6,925.00 on 10/21/98 [see the check #46400, Appendix page 24 from Evergreen Manor, Inc. in this amount] and another payment on 11/30/98 in the amount of $5,000.00 [also from Evergreen Manor, Inc.] but denied that Evergreen Manor was the client.

Respondent further admits that services were performed, billed and paid for during a six month period but claims that no "Oral, De-Facto or implied contract" nor any "agreement or understanding" existed during that six month period, and denied that they breached or unilaterally changed the hourly rate charged. [See invoices 24174, 24329 and 24650, Appendix pages 18, 19; 20, 21; 25, 26 respectively]

Furthermore Respondent asserted that a written letter of Agreement that was executed by the parties did not make any changes in the relationship except for an increase in the hourly rate charged, thereby alleging that Evergreen Manor, Inc. was never the client.

Petitioner vehemently insisted that the Respondent sought to recover a corporate obligation from Petitioner without merit or legal basis. That Respondent failed to fully respond to the legitimate discovery efforts of Petitioner.

The Lower Court found that there were no issues of unresolved and material facts, having denied Petitioner's Motion for a court order compelling respondent to fully and completely answer Petitioners discovery requests and therefore justified the Court's granting Summary Disposition, saying Petitioner had not provided any proof, [due to the "stonewalling" by Bator & Berlin in denying discovery to Petitioner] and thereafter the Trial Court dismissed Petitioners motion for an order to compel discovery as being mute.

Judgment on April 30, 2002 in favor of respondent in the amount of $48,455.95 plus accrued interest.

MICHIGAN COURT OF APPEALS

The Michigan Court of Appeals denied a timely filed 'Appeal By Right" saying the "Final Order" of the Lower Court had not been submitted.

Petitioner immediately submitted a Final Order, stating that he believed a copy of the Final Order had been previously filed and asked for reconsideration of the above dismissal.

Reconsideration was denied on August 7, 2002.

MICHIGAN SUPREME COURT

Application to the Michigan Supreme Court for Leave to Appeal on August 27, 2002 asserting among other items that the Trial Court:

(a) Granted preferential treatment to attorney's versus a non-attorney;

(b) Violated Petitioners rights to Due Process and Equal Protection under the Law as provided by the fourteenth amendment to the United States Constitution;

(c) Violated Michigan Case Law stated in [*Daniels v Allen Industries, Inc* 391 MICH [13] (1974) and in *Klabunde v Stanley* 16 MICH App 490 [14] (1972) along with violating Michigan Court Rules [MCR 2.309, 2.310, 2.312] all concerning discovery;

(d) Denied Petitioner access to the facts because of respondent's "stonewalling" the discovery process;

(e) Failed to hold respondent to consequences delineated in MCR 2.111 (E)(1) for respondent's failure to provide a responsive

pleading to an Affirmative Defense timely raised by Petitioner;

(f) Violated MCR 2.116 (C) (10) by unlawfully granting Summary Disposition; and failed to hold respondent to the Rules of Professional Conduct by the Michigan Bar, rule 1.8 prohibiting an attorney from accepting compensation from a third party without discloser.

The Michigan Supreme Court denied leave to appeal on January 31, 2002.

JURISDICTION

Petitioner is raising Constitutional issues concerning equal protection under the law as provided by clause one of the Fourteenth Amendment to the United States Constitution; unresolved issues ignored by the trial court that are very important to Petitioner's case, left unresolved by the dismissal of the appeal to the Michigan Court of appeals and the denial of Leave to Appeal by the Michigan Supreme Court on January 30, 2003 which facts all combined to deny Petitioner equal protection under the law as

Guaranteed by the Fourteenth Amendment to the U. S. Constitution and presenting the same kind of "irrational and wholly arbitrary" actions involved in *Village of WillowBrook v Oleck*, 528 U. S. 562 (2000) and motivated by ill will, which in this case was against a non-attorney in favor of an attorney.

The United States Supreme Court is the last resort available in appealing this injustice and violation of Petitioner's Constitutional Rights.

RELEVANT PROVISION INVOLVED

Fourteenth Amendment, United States Constitution and *Village of WillowBrook v Olech*, 528 U.S. 562 (2000).

STATEMENT OF THE CASE

A. Nature of the Case.

Evergreen Manor, Inc, a Michigan Corporation [hereinafter EMI] was licensed by the State of Michigan as an Adult Foster Care Provider [hereinafter AFC] after having been incorporated on January 9, 1986 to take over a business started in 1976 by Petitioner and his wife, Betty Lou French.

All AFC licenses were re-issued in the name of EMI thereafter and no further AFC Licenses were issued in the name of Petitioner or his wife after January 1986. Since Petitioner, personally did not have any AFC Licenses in his name, retaining of Bator & Berlin to handle licensing matters, could have only been in the name of the "licensee", namely EMI and not Petitioner.

In May 1998, after Petitioner had previously retired as President, CEO and Chairman of the Board of EMI, the then senior management of EMI walked out in the middle of a problem with licensing that they had allowed to-fester. When three top-level managers left EMI with only one-hour notice, the Board of Directors recalled Petitioner from retirement to once again head up the corporation.

On his return, Petitioner recognized the need for Legal Counsel and called Respondent, having been recommended to Petitioner by the Adult Foster Care Association in the State of Michigan as a Legal Firm experienced in AFC Licensing matter, and talked with Attorney Gregory J. Bator, Managing Partner of Bator and Berlin, P. C.

After explaining to Respondent the licensing problems EMI was facing and discussing the terms and substance of the representation, Petitioner, on

behalf of EMI retained Bator and Berlin, P. C. to represent EMI with the Michigan Department of Consumer and Industry Services who handled the Adult Foster Care Licensing of EMI.

This case involves the action of a Michigan Law Firm in which the Managing Partner and another attorney [collectively "Officers of the Court"] intentionally set about, and/or were allowed by the Trial Court to place themselves [collectively the firm and key personnel as "Officers of the Court"] above the law when suing Petitioner, a non-attorney, for collection of a corporate debt, by ignoring:

(a) Michigan Case law,

(b) Michigan Court Rules and

(c) The Rules of Professional Conduct of the Michigan Bar.

(d) The United States Constitution, Amendment 14.

Taken as a whole, the abuse of the above three factors by the Respondent and the Trial Court resulted in violating Petitioner's rights under the Fourteenth Amendment to the United States Constitution, wherein it is stated:

Section 1. "All persons born or naturalized in the United States, and are subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"

The massive violation of Michigan Case Law, Michigan Court Rules, Rules of Professional Conduct of the Michigan Bar, and the Fourteenth Amendment of the U. S. Constitution, by and with the tacit approval of the Trial Court, bordered on a conspiracy to deny to Petitioner the due process and equal protection of the law as guaranteed by Fourteenth Amendment to the U. S. Constitution by the irrational and wholly arbitrary actions ruled on by this Honorable Court in *Village of WillowBrook v Olech,* 528 U. S. 562 (2000) with the ill will in this instance being against a non-attorney and in favor of an attorney.

B. Statement of Relevant Facts.

Denial of full and open discovery

Michigan judiciary has had a long-standing tradition of full and open discovery as a necessary element in providing justice within the state of Michigan. [*Daniels v Allen Industries, Inc.* 391 Mich 398 (1974) and *Klabunde v Stanley*, 16 Mich App 490 (1969)].

Michigan Court Rules of discovery [MCR 2.302 (B), scope of discover; MCR 2.309, Interrogatories; MCR 2.310, Request for Production of Documents and Things; and MCR 2.312 Request for Admissions;] are clear, specific and sufficiently detailed as to the requirements for discovery and what is expected and required in order to have full and open response to discovery requests.

As a Michigan Law firm, Respondent knew or should have known these requirements, but chose to stymie and thwart Petitioners efforts in legitimate discovery and the Trial Court allowed Respondent to succeed to the detriment of Petitioner and in direct violation of Michigan Case Law, Court Rules and Petitioner's rights under the Fourteenth Amendment to the United States Constitution.

Taken as a whole, in conjunction with the Trial Court, Bator and Berlin utilized their "status as Officers of the Court" in "irrational and wholly

Arbitrary acts, based upon ill will against Petitioner that the Court of Appeals for the Seventh Circuit found in Village of *WillowBrook, ET AL, Petitioners v Grace Olech,* 98-1288 to be a violation of the Fourteenth Amendment to the U. S. Constitution and when appealed to the United States Supreme Court, this Honorable Court, concurred but added that a group of one, was sufficient for equal protection analysis, *Village of WillowBrook v Olech,* 528 U. S. (2000).

MICHIGAN COURT RULES CONCERNING PLEADINGS And THE FAILURE TO RESPOND AS REQUIRED TO THOSE PLEADING OR AFFIRMATIVE DEFENSES.

Michigan Court Rules are very clear as to Pleadings, [MCR 2.110] concerning the Form of Responsive Pleadings, along with the requirement to respond to any Responsive Pleading, while [MCR 2.111 (C)] establishes the effect of failing to deny Responsive Pleadings including any "Affirmative Defenses". with any such failure amounting to an "Admission" to the claims made or the "Affirmative Defenses" raised.

Bator and Berlin failed to respond or deny Petitioner's Responsive Pleadings and Affirmative Defenses, but the Trial Court failed to hold the Attorney's accountable in accordance with MCR 2.111 (C) and did not find or treat such failure as an "admission" as required by MCR 2.111 (C).

DOUBLE STANDARD

However, when Petitioner filed, on a timely basis, an Amended Answer to the original Complaint, but only referred to the attachments to Responders original Complaint, rather than loading up the court files with duplicate copies of each invoice attached to the original Complaint, the Trial Court denied the "Amended Answer" and sanctioned Petitioner for filing a frivolous motion [answer], because the court said it could not consider the attachments to the original "Complaint" while at the same time the Trial Court consistently ignored Michigan case law, court rules and the rules of professional conduct of the Michigan Bar in those instances when it favored the attorney versus Petitioner, a non-attorney. An irrational and wholly arbitrary action pursued by the firm of Bator and Berlin out of ill will against Petitioner by "Officers of the Court".

C. THE TRIAL COURT DECISION, case 01-48694-CZ, Honorable Paul Hamre, Chief Judge.

The Trial Court, holding that Petitioner was responsible for the legal fees, issued a judgment in the amount of $48,455.95 plus accrued interest against Petitioner claiming that Petitioner sign the letter of agreement as an individual while totally ignoring the actual practices between the parties during the first six months of legal representation.

Furthermore, the Trial Court:

(1) Ignored the format and title clearly stated on each invoice during the six months time period of service prior to the letter of agreement with such practices continuing throughout the subsequent months, but the Trial Court found that fact "not to be indicative of the real client";

(2) Ignored the failure of the 1999 letter of agreement to recognize the existence of any earlier agreement or practice, denied any testimony on that matter as being "heresay" and violating the Parol Evidence Rule, although Petitioner asserted the failure to acknowledge the existence of the basis for the six-month activity to be fraudulent or a

(3) mistake and covered by the second exception to the Parol Evidence Rule as defined by the Michigan Court of Appeals in *RE: Estate*, 216 Mich. App. 247, NW2d, 695 (1996) which was also ignored by the Trial Court;

(3) Ignored the thousands of dollars of payments by Evergreen Manor, which by accepting the payment without any notice to Petitioner, Bator and Berlin treated these payments as from a third party "payor" while at the same time ignoring the Rules of Professional Conduct of the Michigan Bar requiring notice to a client of any third party payments [Rule 1.8(f)], that according to this rule is a prohibited transaction;

(4) Ignored the "stonewalling" by Respondent of the Petitioners efforts at legitimate discovery because Respondent was a "law firm", and this "Stonewalling" was also contrary to case law [*Daniels v Allen Industries, Inc.* 391 Mich. 398 (1974); *Klabunde v Stanley*, 16 Mich. App 490 (1969)] and contrary to Michigan Court Rules concerning discovery [MCR 2.302(B), MCR 2.309, MCR 2.310 and MCR 2.312];

(6). Denied Petitioners motion for an order to compel full, open and responsive discovery, effectively denying Petitioner needed proofs that only Responder had, as this Petitioner was neither the client, nor had the files of the defunct corporation;

(6) Used Petitioner's lack of "proofs" as the basis to assert that no "genuine and material issue of unresolved fact existed, except as to money" as mandated by MCR 2.116(C)(10), when in fact there are still several, "genuine and material issues of unresolved facts besides any money issues";

(7) Ignored the response of the Responder that certain documents requested by Petitioner could not be provided for "reasons of Client Confidentiality" while asserting Petitioner was the client;

(8) Ignored the failure of Respondent to reply to "Responsive Pleadings and Affirmative Defenses" as required by MCR 2.111 (C) and because the Respondent is a Law Firm, the Trial Court ignored consequences of that failure to respond which according to MCR 2.111 (E)(1) requires that this failure be considered an "Admission" and not just ignored;

(9) Clearly holding Petitioner to a higher standard as a non-attorney than the Trial Court held the Responder, a Law Firm in spite of personal and wholly arbitrary acts against a non-attorney and in favor of attorney's who were "Officers of the Court", an action found by the U. S. Supreme Court, in *Village of WillowBrook v Olech,* 528 U.S. 562 (2000) to be a violation of the Fourteenth Amendment of the U. S. Constitution.

D. The Michigan Court of Appeals. Case # 241675

The Michigan Court of Appeals dismissed a timely 'Appeal By Right" by Petitioner, asserting the final order had not been submitted [Appendix 5]. Believing a final order had been previously submitted, nevertheless, Petitioner re-submitted a "Final Order" and requested reconsideration [Appendix 6,7]. The motion for "rehearing" was denied on August 7, 2002 by the Honorable Jessica R. Cooper, Presiding Judge [Appendix 8]

E. The Michigan Supreme Court case # SC 122222

The Michigan Supreme Court stated, "On order of the Court, the application for leave to appeal from the June 21, 2002 decision of the Court of Appeals

is considered, and it is denied, because we are not persuaded that the question presented should be reviewed by this Court'. This order was entered January 31, 2003 [Appendix 17]

REASONS FOR GRANTING THE WRIT

1. JUDICIAL BIAS: The American system of justice presumes and expects that there will be equality before the law. The worst form of legal-inequality occurs when the Courts bends or ignores the rules for "attorneys", "Officers of the Court" who should be upholding the law and not trying to take advantage of the law, while maintaining an artificial high "bar" for any non-attorney.

This is a classic court case where Judicial Bias is precisely what occurred.

When the Trial Court allowed the Law firm to make a mockery of the discovery process, leaving the Petitioner without benefit of the generally open discovery process that is normally enforced in Michigan, and then used the withholding of discovery material that had been legitimately demanded in accordance with Michigan Court Rules as a justification for granting Summary Disposition, it is clear that the Trial Court "bent-over-backwards

in favor of the Law Firm and against the non-attorney', officially denying Petitioner the Equal Protection of the Law guaranteed by the Fourteenth Amendment of the U.S. Constitution.

2. The actions of the Trial Court and the denial of appeal by both the Michigan Court of Appeals and the Michigan Supreme Court combined to deny Petitioners rights to Equal Protection and Due Process as guaranteed by the Fourteenth Amendment to the U. S. Constitution.

3. This issue of Judicial Bias in favor of Attorney, in essence results in the creation of two standards under the Law, one for attorneys and one for non-attorneys. This is a growing problem and needs to be addressed by this Honorable Court.

4. Irrational and wholly arbitrary acts that violated Case Law, Michigan Court Rules and the Fourteenth Amendment to the United States Constitution, especially when performed by Officers of the Court and allowed by the Trial Court is fundamentally wrong, a violation of the ruling of this Honorable Court in *Village of WillowBrook v Olech,* 528 U. S. 562 (2000) and should not be allowed to prevail.

CONCLUSION

Therefore, Petitioner Paul C. French, Jr., a non-attorney, requests that this Honorable Court Grant this Petition for a Writ of Certiorari to the Michigan Supreme Court.

Respectfully submitted,

Paul C. French, Jr. a non-attorney
28844 63rd. Street,
Bangor, Michigan, 49013
269-427-5641

June 27, 2003

App. 1

APPENDIX

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App. 3

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF VAN BUREN

Bator & Berlin P.C. Honorable. Plaintiff
Paul E Hamre
Vs # 01-48-694-CZ-H
Paul French
Defendant

ORDER SETTLING JUDGMENT

Gregory J. Bator (P33232)
Marcia L.Scrimger (55466)
400 West Maple Rd. Ste 300
Birmingham, Mi. 48009

Paul French
in Pro Per
28844 63rd St.
Bangor, Mi. 49013

At a hearing held in the Courthouse, Village of Paw Paw, Michigan on April 30, 2002

Present: Honorable Paul E. Hamre, Circuit Judge

This matter comes before the court as a motion to settle the judgment.

After reviewing both parties' positions the court finds that the plaintiff's calculations for judgment interest and filing fees is correct and orders the

plaintiff's judgment to be entered.

And IT IS SO ORDERED.

True Copy /S/
Apr. 30 2002 Paul E. Hamre, Circuit Judge
Shirley K. Jackson
Van Buren County Clerk

Certificate of Mailing

I certify that on this date, copies of the above order were mailed to the attorneys and/or parties of record at the addresses shown by first class ordinary mail.

Dated: April 30, 2002 /S/

App. 5

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: Bator & Berlin PC v Paul French
Docket No. 241675
L.C. No. 01-048694-CZ

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), Orders

The claim of appeal filed May 24, 2002, is dismissed for lack of jurisdiction because an order deciding the motion for new trial had not been entered before the claim was filed. It an appellant files a motion for a new trial, reconsideration, rehearing or similar postjudgment relief within 21 days of the entry of a final order, the finality of the order is suspended until the trial court enters an order denying that motion. A claim of appeal that is filed before the entry of the denial order is a premature claim. See MCR 7.204(A)()(b). This court makes no determination as to whether a final order has even been entered yet. The March 27, 2002 order was not a final order since it did not determine the remedy the Plaintiff was entitled to. See MCR 7.202(7)(a)(i). The April 30, 2002 order may be a final order, but the appellant has not supplied this Court with a copy of that order as required by MCR 7.204 (C) and therefore no determination can be made.

/S/

A true copy entered and certified by Sandra Schultz Mengel, chief Clerk on June 21 2002 /S/ Chief Clerk.

SEAL OF THE COURT.

App. 6

COURT OF APPEALS
THIRD DISTRICT

Paul French Defendant & Appellant	)) Case # 241675
V	) L.C. # 01-48-694-CZ) Hon. Paul Hamre,
Bator & Berlin, P. C. Plaintiff & Appellee	) Chief Judge)

Paul French,
Appellant in Pro Per
28840 63rd St
Bangor, MI. 49013
616-427-5641

Gregory J Bator (P33232)
Marcia Scrimger (P55466)
Bator & Berlin, Appellee
400 West Maple Rd. ste.300
Birmingham, Mi. 48909
248-642-7844

Request for Reconsideration of my Appeal by Right

Comes now Defendant-Appellant in pro per and states that a copy of the Order Settling Judgment dated April 30, 2002 was supposed to have been attached to the appeal by Right in this matter by Defendant-Appellant.

Defendant-Appellant apologizes to this Honorable Court for this omission and attaches a copy of the Lower Court Order Settling Judgment dated April 30, 2002 and hereby requests this Honorable Court to reconsider the dismissal of the Appeal by Right of Defendant-Appellant in this matter.

Respectively submitted,

/S/

Paul French
Defendant-Appellant in pro per
28840 63rd Street
Bangor, Michigan 49013
616-427-5641

June 24, 2002

App. 8

Court of Appeals, State of Michigan

ORDER

Bator & Berlin, PC v Paul French	Jessica R. Cooper Presiding Judge
Docket 341675	Kurtis T.Wilder
L.C. 01-048694-CZ	Patrick M Meter Judges

The Court orders that the motion for rehearing is DENIED

/S/

Presiding Juge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk on

Seal of the Court of Appeals

Aug 07 2002
Date

/S/
Chief Clerk

App. 9

STATE OF MICHIGAN

SUPREME COURT
FOR THE STATE OF MICHIGAN

Paul C. French, Jr.)	
)	MICH #
Defendant-Appellant)	COA # 241675
)	LC # 01-48694-CZ
V.)	Honorable Paul Hamre
)	Chief Judge
Bator & Berlin, P. C.)	
)	Oral Argument
Plaintiff-Appellee)	Requested.
)	

For Plaintiff-Appellee
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APPLICATION FOR LEAVE TO APPEAL

Comes now, Paul C. French, Jr., Appellant in pro per and hereby makes application for leave to appeal from a final order of the Michigan Court of Appeals dated August 7, 2002, concerning a matter that was "appealed by right" to the Michigan Court of Appeals from the Trial Court In the Van Buren County and the Court of Appeals Final Order in that matter states as follows,

"The Court orders that the motion for rehearing is "Denied".

A copy of that order is attached.

Grounds Granting Leave to Appeal

A Grave Injustice Occurred

There was a grave injustice perpetrated by Appellee and permitted by the trial court that violated Appellant's rights to Due Process and Equal Protection under the law. As an individual,

All the Appellant sought was an open and full discovery in preparation for the trial and hearing on the issues so that justice might be served.

That right was denied Appellant by Appellee and

allowed by the trial court, contrary to law and in direct violation of *Daniels v Allen Industries, Inc.* 391 MICH 398 [13] (1974) *and Klabunde v Stanley,* 16 MICH App 490 [14] (1972).

There is need for a strong decision order of this Honorable Court that sends an unmistakable and clear message to the trial courts and litigants, that failure to comply with this requirement of full and open discovery will meet with significant sanctions against litigants with attorney's and/or attorney's acting in an individual capacity.

PREFERENTIAL TREATMENT GIVEN ATTORNEY'S OVER INDIVIDUALS ACTING WITHOUT COUNSEL

The trial court appears to have given "preferential treatment" to Appellee, a law firm that harmed Appellant who was acting as an individual. This referential treatment occurred in the following four instances.

A. The trial court allowed Appellee to violate Michigan Court rules by ignoring a failure of Appellee to provide a responsive pleading to Affirmative Defenses raised by Appellant while failing to hold Appellee who is an attorney to the consequences

of that failure as delineated in MCR 2.111 (E) (1).

The trial court allowed Appellee to violate Michigan Court Rules of Discovery, delaying and then denying, as mute, a motion by Appellant for the trial court to compel responsive discovery by Appellee.

B. The trial court ignored various Court Rules and Rules of Professional Conduct on the part of Appellee, yet when Appellant filed, as an individual, a motion to dismiss the complaint, that motion was denied since copies of the invoices of Appellee were not attached to the motion and then dismissed that motion, even though each such document was already in the court records as an exhibit to the Complaint.

In addition to denying the motion to dismiss, the court found the motion of appellant to be frivolous, without merit and granted sanctions to Appellee which Appellant paid. Trial Court Docket 15, 16, &17.

C. In violation of the law, the trial court

App. 13

granted Summary Disposition to Appellee under MCR (C)(10) when there were numerous issues of genuine and material unresolved issues of fact.

The subject matter of this appeal involves legal principles of major significance to the jurisprudence of the State.

The violation and failure of the Appellee to adhere to Michigan Court Rules of Discovery, Specifically MCR 2.309, 2.310 and 2.312 and the Trial Court failure to compel compliance as required by law, illegally denied Appellant, an individual who was just seeking a day in court, justice and protection of the courts of Michigan, without the illegal interference in that process by the Appellee and the trial court violated the law by failing to provide that protection and enable justice to occur.

Furthermore, the Appellee by reserving to their judgment what or which discovery efforts to which they would respond, based upon a false determination that Appellee did not have to respond if Appellee believed that Appellant already had that information, Appellee acted as though endowed with this discretionary right by the Michigan Supreme Court.

The decision of the trial court is in conflict with decisions of the Supreme Court or other Court of Appeals decisions.

The Trial Court decision violated Case law, requiring full and open disclosure as found by the Michigan Supreme Court, in *Daniels v. Allen Industries, Inc.* 391 Mich 398 [13] (1974) where this court ruled, "Michigan has a strong commitment to a far reaching, open and effective discovery practice; discovery rules are to be liberally construed in order to further the end of Justice" and the Michigan, Court of Appeals in *Klabunde v Stanley,* 16 Mich App 490 [14] (1972) where the court ruled, "Discover rules were promulgated to simplify and clarify issues and their purpose is to provide accurate information in advance of trial as to the actual facts and circumstance of a Controversy.

CONCERNING THE APPEAL BY RIGHT TO THE MICHIGAN COURT OF APPEALS.

The Appeal was timely filed and received by the Court of Appeals on May 24, 2002 from Appellant. This filing included; (a) the Transmittal Letter dated 5-22-02, (b) "The Claim of Appeal" [form MC 55] with proof of service, and (c) a letter to the Court Reporter ordering the transcripts with full payment of $210.00 attached.

On May 24, 2002, Appellant sent the filing fee. Appellant had $250.00 cash to pay the Court of Appeals filing fee, but the court was not able to accept cash. Later that day a check for $250.00 was sent by Appellant.

On June 5th, 2002, Appellant served: (a) the Jurisdictional Checklist for the Court of Appeals; (b) a copy of the Final Order being appealed; (c) notice from the Court Reported that the transcripts had been ordered and paid for; (d) Proof of service for this material; (e) Docket for the Lower Court case in Van Buren County, case # 01-48-694-CZ-B along with the Transmittal Letter.

On June 24th, 2002. Appellant received from the Court of Appeals an order dated June 21, 2002 dismissing the appeal # COA 2241675 of Appellant for failure to include the final order dated April 30, 2002. Appellant immediately sent a copy of this "Final Order dated April 30th, 2002 along with a transmittal letter dated June 24th, 2002. In this letter of June 24th 2002, Appellant apologized to the Court for this omission and asked Reconsideration of the Court of Appeals Final Order of Dismissal for the failure to include the Final Order from the Lower Court.

On August 8, 2002, a Final Order dated August

7th. 2002 was received from the Court of appeals denying Appellant's request for reconsideration.

It is this Final Order from which Appellant is asking Leave to Appeal to the Michigan Supreme court..

The underlying issues were not fairly settled by the trial court and were not heard by the Court of Appeals, so these issues are still open and in need of Review by and Direction from the Supreme Court. Appellant filed with this motion, a brief with attached exhibits and a motion concerning MCR 7.309.

Wherefore Appellant hereby prays
that Leave for Appeal will be granted.
Respectively submitted,
/S/
Paul C. French, Jr.
Appellant in pro per
August 27, 2002

ORDER

Michigan Supreme Court
Lansing, Michigan

Entered: January 31, 2003

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Steven J. Markman
Justices

BATOR & BERLIN, P.C.
Plaintiff-Appellee

V

Paul C. French, Jr.
Defendant-Appellant

SC: 122222
COA: 241675
Van Buren CC 01-048694-CZ

On order of the Court, the application for leave to appeal from the June 21, 2002 decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

Court Seal

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court. January 31, 2003 /S/

App. 18

Bator & Berlin, P. C.
400 W. Maple
Suite 300
Birmingham, Mi. 48009

Invoice submitted to:

Evergreen Manor
Attn: Paul and Betty Lou French
28844 63rd Street
Bangor, MI 49013

September 8, 1998

Invoice # 24174

Professional Services	Hrs./ Rate
8/26/98 Review documents concerning licensing matters.	1.00 90.00/hr
8/27/98 Telephone conference with client concerning licensing and related matters.	2.00 90.00/hr
Review documents concerning Licensing; Drafted correspondence To clients concerning licensing Matters.	0.75 90.00/hr

8/31/98 Telephone conference with Ladd representatives; Intra-Office consultation and analysis concerning same. Telephone conference with client concerning same. 1.00 90.00/hr

For professional Service rendered.

	4.75 hrs.	$427.50
Previous balance		($707.50)
Balance due		($280.00)

No Payment is required at this time

App. 20

Bator & Berlin, P. C.
400 W. Maple
Suite 300
Birmingham, Mi. 48009

Invoice submitted to:

Evergreen Manor
Attn: Paul and Betty Lou French
28844 63rd Street
Bangor, MI 49013

October 6, 1998

Invoice # 24329, Segmented invoice portion

	Professional Services	Hrs./ Rate
9/1/98	Review August 28 MAPA letter review documents regarding I, II, III. Draft summary Memo	3.50 $90.00/hr

---

The balance of page one and all but the totals on page two have been omitted.

App. 21

For professional services rendered.

	24.50 hours	$2,205.00
Previous Balance		($ 282.00)
Balance Due		$1,925.00

App. 22

Bator & Berlin, P. C.
400 W. Maple
Suite 300
Birmingham, Mi. 48009

Invoice submitted to:

Evergreen Manor
Attn: Paul and Betty Lou French
28844 63rd Street
Bangor, MI 49013

November 17, 1998

Invoice # 24607

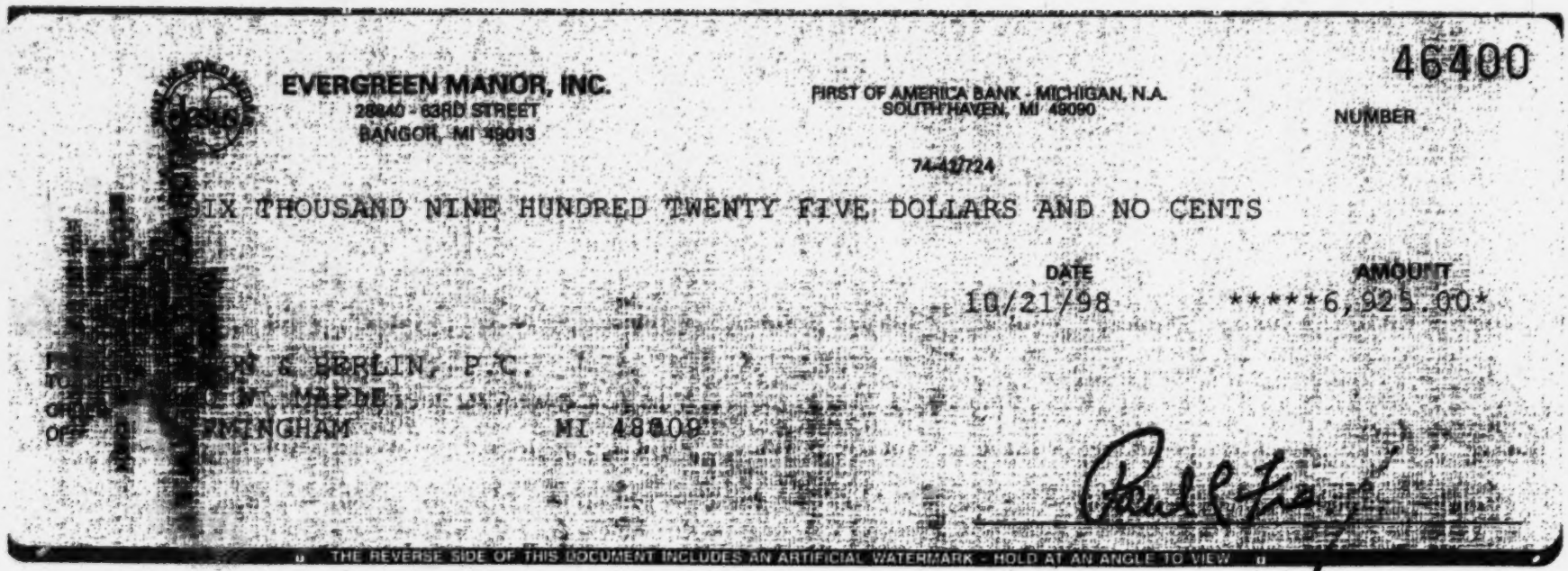
	Professional Services	Hrs./ Rate
10/5/98	Review file for all complaints and response	3.00 $90.00 hr
10/7/98	Review documents concerning Licensing matters	2.50 $90.00 hr

Balance of page one, all of page two and three and all but the total on the bottom of page four of this segmented invoice # 24607 have been omitted.

For Professional Services rendered (page four)
76.50 hours $6,885.00

Evergreen Manor, Page 5

8/27/98 Fed. Exp charges	$ 10.75
Total Amount of this bill	$6,895.75
Previous Balance	$1,925.00
10/21/98 Payment, Thank you	($6,925.00)
Balance Due	$1,895.75



EVERGREEN MANOR, INC.
28840 - 63RD STREET
BANGOR, MI 49013

FIRST OF AMERICA BANK - MICHIGAN, N.A.
SOUTH HAVEN, MI 49090

74-41724

46400
NUMBER

SIX THOUSAND NINE HUNDRED TWENTY FIVE DOLLARS AND NO CENTS

DATE 10/21/98

AMOUNT *****6,925.00*

PAY TO THE ORDER OF K & BERLIN, P.C.
[illegible] MAPLE
BIRMINGHAM MI 48009

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

⑈046400⑈ ⑆072400421⑆ 040300401 4⑈ ⑈0000692500⑈

App. 24

PAY TO THE ORDER OF
NBD BANK 112
BLOOMFIELD HILLS, MI 48304
▶ 072000326 ◀
FOR DEPOSIT ONLY
BATOR ROUALET AND BERLIN, P.C.
0012061B4

8014 0 1 6

26 OCT 98

P.O.D.
072000326
10/26/98
075
DEPOSIT

Bator & Berlin, P. C.
400 W. Maple
Suite 300
Birmingham, Mi. 48009

Invoice submitted to:

Evergreen Manor
Attn: Paul and Betty Lou French
28844 63rd Street
Bangor, MI 49013

December 7, 1998

Invoice # 24650

Professional Services		Hrs./ Rate
11/4/98 Telephone conference with client concerning various business matters	1.25	$100.00 hr

The balance of this page and all but the end of page two of this invoice is omitted.

For Professional services rendered		
	11.25 hours	$1,125.00
Previous Balance		$1,895.75
11/30/98 Payment, thank you		($5,000.00)
Balance due		($1,979.25)

No Payment required at this time.

App.28

Response to Interrogatories

Examples of Bator & Berlin's un-responsive answers to some of the legitimate discovery efforts of Petitioner. Here are excerpts from pages 7 and 8 of the response by Bator & Berlin to Interrogatory of Petitioner French. Note the repetitive responses. Note also the assumption that Petitioner, who was not the client, had custody of the corporate files that do not exist since Evergreen Manor ceased operations in November 1998.

Interrogatory Question 11.

In your invoice # 21607 dated 11/17/1998 and submitted to Evergreen Manor, it is stated that on 10/5/98 that you reviewed files for all complaints and responses. Please identify the title of each complaint, naming the party cited, the date of the complaint, the date of any response and a brief summary of the nature of the complaint, the location involved and the date of the alleged occurrence.

You may answer by supplying a copy of the face page [and other pages short of a complete copy] containing the location, date, facility, license # and alleged complaint, if that would be easier for Plaintiff. A full response is expected concerning

identification of the complaint unless a copy of the face sheet is supplied.

Bator & Berlin answer to question # 11:

Defendant did not provide any objections at the time the work was performed. Without waiving these objections, Plaintiff states that the documents included, were not limited to documents relevant to Plaintiff's representation of Defendant in cases involving the Department of Consumer and Industry Services, criminal investigations against Defendant, claims against former employees of Defendant, and claims on Defendant's behalf regarding Licensing issues, among numerous other issues. These issues included, but were not limited to the cases described in Attachment # 2 of Plaintiff's response to Defendant's Demand for Production of Documents from Plaintiff Bator & Berlin, P. C.

Note: Respondent asserts that Petitioner was the client, yet it was Evergreen Manor, Inc that was the State licensed Adult Foster Care Provider and not Petitioner French. Bator & Berlin, PC never represented Petitioner in any criminal matter.

Interrogatory question # 12

Your invoice # 24650 dated December 7, 1998 and submitted to Evergreen Manor makes

reference to matters concerning "Ratzlaff" on November 13, 1998 and again on November 25, 1998. Were these matters both concerning the licensing concerns of Evergreen Manor? Please explain your answer if other than a yes as to what these matters concerned.

Response to Question # 12 "See response to Interrogatory # 11".

Question # 13. In your invoice # 24607 dated November 17, 1998 and submitted to Evergreen Manor you acknowledged that payment in the amount of $6,925.00 was made on October 21, 1998. Please identify the check number and the company making the payment of $6.925.00.

Bator & Berlin's response to Question #13. Plaintiff objects to this interrogatory for the reason that it is unduly burdensome, it is meant solely to harass Plaintiff, and Defendant has this information in his custody and control. Plaintiff is not disputing this credit to Defendant's account and has credited Defendant's account for this amount.

NOTE: Obviously, Bator & Berlin is unwilling to admit that Evergreen Manor, Inc. made the payment in question. See appendix 24 for copy of that check showing the $6,925.00 as having been deposited to

the account of Bator, Roualet and Berlin, PC on 10/26/98.

Question # 14.In your invoice 24650 dated

December 7, 1998 and submitted to Evergreen Manor you acknowledge receipt of a payment in the amount of $5,000.00. Please identify the check number and the company making that payment of $5,000.00

Response to Question # 14. Plaintiff objects to this interrogatory for the reason that it is unduly burdensome, it is meant solely to harass Plaintiff, and Defendant has this information in his custody and control. Plaintiff is not disputing this credit to Defendant's account and has credited Defendant's account for this amount.

Question # 15. In your invoice # 24174 dated September 8, 1998 and submitted to Evergreen Manor you indicate a previous credit balance of $707.50. What is the source of that credit Balance? Please identify the check number and the company making the payment that provided the basis for this credit balance.

Response to Question # 15. Plaintiff objects to this interrogatory for the reason that it is unduly burdensome, it is meant solely to harass Plaintiff,

and Defendant has this information in his custody and control. Plaintiff is not disputing this credit to Defendant's account and has credited Defendant's account for this amount.

This identical answer was provided to interrogatory questions # 16, 17, 18, 19, 20, 21, 22, 23, 24, & 25. Totally un-responsive answers.

Demand for the Production of Documents

Examples of Bator & Berlin's un-responsive answers to some of the legitimate discovery efforts of Petitioner. Excerpts from pages 3 & 4 of the response by Bator & Berlin to the Demand for Documents by Petitioner in accordance with MCR 2.310.

Defendant demanded documents to support various items and allegations made by Plaintiff in Plaintiff's Complaint. Although 51 documents were provided, 29 of those documents were duplicates, leaving on 22 individual documents of which most documents were incomplete and did not comply with the original demand. A typical response by Plaintiff was worded as follows:

"Plaintiff objects to this request for the reason that it is unduly burdensome and it is meant

solely to harass Plaintiff. Plaintiff also denies that the invoice was submitted to Evergreen Manor, Inc. Without waiving these objections, Plaintiff states that upon information and belief, this document was provided to Plaintiff by Defendant and Defendant has this information in his custody and control. Plaintiff provided copies of all correspondence and all work performed on Defendant's behalf to Defendant on a regular basis during the time services were performed.

This type of response was provided in almost every instance in response to Defendant's Demand for the Production of Document under MCR 2.310.

Three points need to be noted: (1) When Plaintiff states that the "invoices were not submitted to Evergreen Manor, Inc." one only needs to look to the heading of each invoice [see appendix 18, 20 and 26 of this appendix] to see that all the invoices start out with "submitted to Evergreen Manor"; (2) Petitioner French was not, nor is not the client, Evergreen Manor was the client and Petitioner does not have control of all the records of Evergreen Manor, Inc; (3) Plaintiff misspoke, in that Defendant French did not supply the documents to Plaintiff's, but rather Plaintiff was the author of most of the documents demanded.

Examples of Bator & Berlin's un-responsive answers to some of the legitimate discovery efforts of Petitioner. Excerpts from the four-page response by Bator & Berlin to the Request for Admissions by Petitioner.

Response of Plaintiff to Defendant's Request for Admission in accordance with MCR 2.312

Request # 1. Please admit that the roman numbers I, II, and III as listed in your invoice # 24329 dated 10/6/1998 and submitted to Evergreen Manor represents buildings one, two and three of Evergreen Manor, Inc. and were the three State Licensed Adult Foster Care Residential buildings located on 63rd Street, Bangor Michigan, 49013.

Answer: In response to Paragraph 1, Plaintiff responds that the invoice was submitted to Paul French but in other respects it is admitted.

Just look at the heading for any invoice, such as Invoice # 24174 or Invoice # 24607 pages 18 and 20 respectively in this appendix.

Request # 2 If you did not respond to this request [by inference request # 1], do you deny that these are numbers assigned to one of the three. State Licensed Adult Foster Care Residential building located on the Evergreen Manor, Inc. property on

63rd. Street, Bangor, Michigan, 49013.

Answer: In response to Paragraph 2, Plaintiff neither admits nor denies because the request is incomprehensible, to the extent that the request is comprehensible, it is denied for the reason it is untrue.

Here again the Plaintiff is disingenuous in it's response to this request for Admissions. First off they did answer the first question, but their answer was not entirely true. Then to deny the answer they had just given, show the duplicity and distain with which Plaintiff Bator & Berlin treated Michigan Court Rules and Case Law concerning discovery.

As Attorney's they acted as if they were above the law, while "posing as officers of the Court". By denying Petitioners motion for an order to compel discovery and failing to order Plaintiff's to provide full and accurate responses to the legitimate discovery efforts of Defendant, the Van Buren County Trial Court in the State of Michigan, an official governmental agency, denied Appellant French the Constitutional Right to Equal Protection of the Law and the Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution.

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BATOR & BERLIN
ATTORNEYS AND COUNSELORS AT LAW
PROFESSIONAL CORPORATION

Gregory J. Bator
William E. Berlin
James Abresch
Bruce G. Siegel
Daniel A. Gwinn

400 W. Maple Suite 300
Birmingham, Mi. 48009

Telephone 248-642-7844
Facsimile 248-642-5922

Of Counsel
David G. Cain
J. Terrence O'Donnell

January 18, 1999

Paul French
Evergreen Manor,
28844 63rd. Street
Bangor, Mi. 49013

RE: Retainer Letter.

Dear Mr. French:

This is to acknowledge that we have been retained to act as attorney for you for legal/business matters. We appreciate this opportunity to serve you. We shall, in our representation, keep you informed of your file's status.

We feel it is important that you understand clearly how our attorney fees are determined. Time is charged for work performed on your behalf, whether it takes the form of in-person meetings, telephone consultations, research, drafting, negotiations, discussions with third-parties, travel on your behalf, or our absence from the office on your behalf.

It is our general policy to delegate all tasks, whenever possible, so that member of our staff who is qualified to perform the particular task at the lowest cost to the client. In this procedure of delegating work, we delegate to other attorneys in our office and we may use legal assistants who are trained, experienced non-lawyers working under the direct supervision of the attorney. The quality of all services performed by the total staff remains the responsibility of the attorney. You will not be billed for clerical or secretarial time. My hourly rate is $135.00 and the hourly rate charged for services of our legal assistants is $50.00. Hourly rates are subject to change from time to time, usually at the end of the year.

Out of pocket expenses directly attributed to the service rendered to you will be charged at cost. These expenses will include such things as photocopying, travel, computerized research, and courier or delivery services. We will advise you of any foreseeable expenses that are significant and ask that you pay these expenses directly.

We will bill you monthly so you will have an opportunity to monitor costs and fees involved. You should feel free to contact our Billing Manager at any time to discuss our billing procedures, the description of the legal service appearing on your bill, and the charges for our services. Payment for the fees and costs identified in the monthly invoice is due within 30 days after receipt. As we anticipate our statements to be paid promptly, we reserve the right to terminate our attorney/client relationship for non-payment of fees or costs at any time.

Please acknowledge your acceptance of the terms of this agreement by signing the enclosed extra copy of this letter and returning it to me together with the retainer in the enclosed envelop. You may keep the other copy of this letter for your files.

We look forward to working with you. Should you have any questions or comments, please contact our office.

Very truly yours,

BATOR & BERLIN, P.C.

/S/

Gregory J. Bator

GJB/cp

I accept the manner of determining the attorney fee in this matters as stated above and accept such representation.

/S/ Dated: 1-21-99
Paul French
SS# 157-18-2960

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Invoice Headings only, four examples.

BATOR & BERLIN, P. C.
400 W. Maple
Suite 300
Birmingham, Mi. 48009

Invoice submitted to;

Evergreen Manor
Attn: Paul and Betty Lou French
28844 63rd Street
Bangor, Mi. 49013

March 8, 1999
Invoice # 25130

Professional Services

BATOR & BERLIN, P. C.
400 W. Maple
Suite 300
Birmingham, Mi. 48009

Invoice submitted to;

Evergreen Manor
Attn: Paul and Betty Lou French
28844 63rd Street
Bangor, Mi. 49013

June 8, 1999
Invoice # 25588

Professional Services

BATOR & BERLIN, P. C.
400 W. Maple
Suite 300
Birmingham, Mi. 48009

Invoice submitted to;

Evergreen Manor
Attn: Paul and Betty Lou French
28844 63rd Street
Bangor, Mi. 49013

September 8, 1999
Invoice # 26129

Professional Services

BATOR & BERLIN, P. C.
400 W. Maple
Suite 300
Birmingham, Mi. 48009

Invoice submitted to;

Evergreen Manor
Attn: Paul and Betty Lou French
28844 63rd Street
Bangor, Mi. 49013

March 7, 2000
Invoice # 27287

Professional Services